

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JIN MING LIN, CHI WAI CHAO,)	
YOOK THAI CHEAH, MING F. FUNG,)	
MUOI GIANG, YUEN YUE SOOHOO,)	
and MEI ZHI,)	
)	
Plaintiffs,)	Civil Action No. 09-11510-GAO
v.)	
)	
CHINATOWN RESTAURANT CORP.,)	
and JOYCE P.Y. HAYES,)	
)	
Defendants.)	
)	

**PLAINTIFFS' MEMORANDUM REGARDING APPLICABILITY OF THE
MASSACHUSETTS MINIMUM WAGE RATE IN THIS FLSA CASE**

Federal law requires that the applicable minimum wage in this case is the Massachusetts minimum wage of \$8.00 per hour.

29 C.F.R. § 778.5 states as follows:

Various Federal, State, and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

(emphasis added).

See Rodriguez v. Almighty Cleaning, Inc., 784 F.Supp.2d 114, 125, n. 4 (E.D.N.Y. 2011) (“Under the FLSA, where the state minimum wage is higher than the federal minimum wage, the federal overtime rate is calculated based on the state minimum wage.”)

RESPECTFULLY SUBMITTED,
For Plaintiffs
By their attorneys,

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Dated: October 25, 2012

CERTIFICATE OF SERVICE

I certify that on this day I caused a true copy of the above document to be served upon the attorney of record for all parties via CMF/ECF.

Date: 10/25/12 /s/ Myong J. Joun
Myong J. Joun